Supreme Court, U.S.
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JOSEPH F. SPANIOL, JR.
CLERK

No. 89-2

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1989

FRANK J. CAMOSCIO,

PETITIONER,

VS.

JUDGE WILLIAM J. TIERNEY, ET AL.,

RESPONDENTS.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

PETITION FOR WRIT OF CERTIORARI

FRANK J. CAMOSCIO
PRO SE
252 HANOVER STREET
BOSTON, MASSACHUSETTS 02113
(617) 720-2849

QUESTIONS PRESENTED

A. IS THE FEDERAL COURT THE CORRECT COURT OF JURISDICTION FOR CIVIL RIGHTS VIOLATIONS ?

B. IS A JUDGE ENTITLED TO JUDICIAL IMMUNITY IF HE KNOWINGLY VIOLATES THE PETITIONER'S CIVIL RIGHTS OF DUE PROCESS AND REDRESS ?

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PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

Petitioner, Frank J. Camoscio, respectfully prays that a writ of certiorari issue to review the judgment and opinion of the United States Court of Appeals for the First Circuit entered in the above-entitled cause on April 20, 1989.

I.

OPINION BELOW

The memorandum opinions of the Court of Appeals are attached as Appendix A-1 and A-2. No opinion was issued by the district court for the District of Massachusetts. The lower court judge dismissed the case after holding a hear-

ing and denied the Petitioner's Motion for Reconsideration.

II.

JURISDICTION

The opinions of the Court of Appeals for the First Circuit were filed on April 4, 1989 and April 20, 1989. The jurisdiction of this Court is invoked pursuant to Rule 17(a) of Rules of the Supreme Court, and 28 U.S.C. § 1254 (1).

III.

CONSTITUTIONAL PROVISIONS INVOLVED

A. The First Amendment of the United States Constitution provides:

Congress shall make no law respecting an establishment of religion, or pro-

hibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

B. The Fourteenth Amendment, Section 1 of the United States Constitution provides:

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

IV.

STATEMENT OF FACTS

On August 4, 1988 Judge Tierney wrote an order barring the Petitioner from filing any motion to set judgment aside and ordered the court to return the motion to the Petitioner. The Petitioner had previously filed an appeal with the Appeals Court which was denied on the grounds that he had failed to provide a transcript of the lower court proceedings, even though he had provided proof that the opposing party Vito Maldero had committed fraud upon the court concerning an alleged fire inspection. Under the Massachusetts Rules of Civil Procedures the Petitioner is allowed to file a motion for reconsideration upon discovery of fraud. The Petitioner finally obtained a transcript of the previous trial as well

as letters from the Fire Inspector stating to the contrary what was filed previously with the court by Vito Maldero during the trial. The Petitioner also pointed out in the transcript that Judge Tierney had instructed the jury to find the Petitioner guilty. Upon reviewing the Petitioner's motion, Judge Tierney wrote his order on August 4, 1988 violating the Petitioner's right of redress and due process. The Petitioner is barred from appealing this case under Rule 46 of the Massachusetts Rules of Civil Procedure since this case originated in small claims court. The Petitioner even sought redress through the single justice of the Supreme Judicial Court of Massachusetts under M.G.L. c. 211 § 4 but was denied redress.

Since the Petitioner had proof of Constitutional violations by Judge Tierney and Vito Maldero, the Petitioner

filed a civil rights complaint in Federal District Court. Judge Young heard the case in Federal District Court and allowed Judge Tierney's Motion to Dismiss. Judge Young then denied the Petitioner's Motion for Reconsideration.

The Petitioner then filed an appeal with the First Circuit which stated that the Petitioner could obtain relief under M.G.L. c. 249 § 5. The Petitioner responded by informing the Appeals Court that under Massachusetts Rules of Civil Procedure the Writ of Mandamus had been abolished. The Appeals Court in their April 20, 1989 decision stated: "It is irrelevant whether appellant presently has any means of seeking redress from the United States Supreme Court. We adhere to our original decision. Lower federal courts may not review state court orders."

V.

REASONS FOR GRANTING THE WRIT

A. THIS CASE PROVIDES THIS COURT WITH AN OPPORTUNITY TO CLARIFY FIRST AMENDMENT RIGHTS OF REDRESS AND JURISDICTION.

The First Circuit Court of Appeals decision should be overturned because it violates the First Amendment rights of the Petitioner, as well as Federal law Title 42 § 1983. The Petitioner states that he is guaranteed the right of redress under the First Amendment of the United States Constitution, as well as Massachusetts Rules of Civil Procedure, Rule 60(b) and Rule 62(b). Judge Tierney's order barred the Petitioner from receiving redress as provided for by Massachusetts General Laws. There is no other mechanism

under the State system which allows the Petitioner redress.

Therefore, the Petitioner sought relief for his Constitutional violation of redress in the Federal District Court under Title 42 § 1983 since he proved that his Constitutional right of redress was being violated by Judge Tierney's order under the color of state law. However, there is no mechanism available to the Petitioner to correct his Constitutional violations, therefore, the Petitioner sought relief in the Federal Court system. The Petitioner wishes to cite the following cases: French v. Heyne, C.A. Ind. 1976, 547 F. 2d 994, "Redress for denial of equal protection is available under this section, "McClellan v. Shapiro, D.C. Conn. 1970, 315 F. Supp. 484, "Where deprivations of rights under this section are alleged, the narrower words of Section

1343 of Title 28 providing federal court jurisdiction for a civil action to redress the deprivation, under color of state law, of any right, privilege or immunity secured by the Constitution or Act of Congress prevail over the broader language of this section." Keper v. Procunier, D.C.Cal. 1975, 398 F. Supp. 756, "It is proper for a person adversely affected by state action to bring a cause of action under this section on grounds of denial of equal protection."

B. THIS CASE PROVIDES THIS COURT WITH AN OPPORTUNITY TO DEFINE WHEN A JUDGE IS ENTITLED TO JUDICIAL IMMUNITY IF HE KNOWINGLY VIOLATES THE PETITIONER'S CONSTITUTIONAL RIGHTS OF DUE PROCESS AND REDRESS.

The First Circuit refused to address any of these issues in their memorandum and order but stated that the Petitioner is only entitled to relief by the state court system and they would not intercede in state matters. The Petitioner had shown to the Federal Court that his due process was violated by Judge Tierney when he had acted on a motion filed by the Petitioner to set aside judgment which questioned the judge's instructions to the jury to find against the Petitioner just as the first judge had done. This motion also contained arguments concerning an alleged fire inspection which never took place, even though Maldero was allowed to present it as fact during the trial. Judge Tierney upon hearing this motion wrote an order barring the court from ever accepting any motion filed by the Petitioner to set judgment aside.

The Petitioner has included a copy of Judge Tierney's Order dated August 4, 1988 and a copy of Petitioners Motion to Set Aside Judgment. See Appendix pages

Judge Tierney had no right to act on this motion since the Petitioner raised issues concerning the Judge's integrity. The Petitioner wishes to cite the following cases: McClure v. Harris, 503 F. Supp. 409, stayed Schweiker v. McClure, 101 S.Ct. 2298, 452 U.S. 1301, 69 L. Ed. 2d 381, probable jurisdiction noted 102 S. Ct. 384, 454 U.S. 890, 70 L. Ed. 2d 204, reversed 102 S.Ct. 1665, 456 U.S. 188, 72 L. Ed. 2d 1, "In order to satisfy fair-hearing requirement of due process clause, a tribunal, whether administrative or judicial, must be impartial; adjudicator may neither have pecuniary interest in outcome nor have been target of personal abuse or criticism from

party before him." and Morris v. City of Danville, Va., 744 F. 2d 1041, "An impartial decision maker is an essential element of due process. U.S.C.A. Const. Amends. 5, 14."

Judge Tierney knew he had no right to write the August 4, 1988 order barring the Petitioner from receiving redress through filing a Motion to Set Judgment aside. The Petitioner wishes to cite the following case: Rankin v. Howard, 633 F. 2d 844 (1980), "When a judge knows that he lacks jurisdiction, or acts in the face of clearly valid statutes or case law expressly depriving him of jurisdiction, judicial immunity is lost."

VI.

CONCLUSION

This case presents important con-

stitutional issues regarding when a person is entitled to redress in the federal court system since the state court system fails to provide such relief. The second issue is when a state court judge is entitled to judicial immunity if he writes an order contrary to state law and rules of the court knowingly violating the Petitioner's Constitutional rights. If Judge Tierney's order is allowed to stand then it would establish a dangerous precedent for other judges to follow.

Respectfully submitted,

Frank J. Camoscio

Frank J. Camoscio
Pro se
252 Hanover Street
Boston, Massachusetts 02113

DATED: July 3, 1989

Domenic Bruno
NOTARY PUBLIC
My Commission Expires May 29, 1992
Domenic Bruno
6/30/85

CERTIFICATE OF SERVICE

I hereby certify that three copies of the foregoing Petition For Writ of Certiorari were mailed to Ruth A. Bourquin, Assistant Attorney General, One Ashburton Place, Boston, Massachusetts 02108, Attorney for Respondent Judge William J. Tierney and to Vito Maldero, pro se, 64 North Margin Street, Boston, Massachusetts 02113 on this 3rd day of July 1989.

I hereby certify that all the statements contained in my Certificate of Service are true and are made under the pains and penalties of perjury.

Frank J. Camoscio

Frank J. Camoscio
Pro Se

Domenic Bruno
NOTARY PUBLIC
My Commission Expires May 20, 1994

Domenic Bruno
6/30/89

APPENDIX

UNITED STATES COURT OF APPEALS

FOR THE FIRST CIRCUIT

No. 89-1079

FRANK J. CAMOSCIO,

Plaintiff, Appellant,

v.

JUDGE WILLIAM J. TIERNEY, ET AL.,

Defendants, Appellees.

Before

Campbell, Chief Judge,

Breyer and Selya, Circuit Judges.

ORDER OF COURT

Entered April 20, 1989

APPENDIX "A"

The motion for reconsideration is denied. Even if the writ of mandamus has been abolished under state law, Mass. G. L. ch. 249, § 5 provides for an action in the nature of mandamus.

It is irrelevant whether appellant presently has any means of seeking redress from the United States Supreme Court. We adhere to our original decision. Lower federal courts may not review state court orders.

By the Court:

Clerk.

[cc: Messrs: Camoscio, Maldero and Ms. Bourquin]

UNITED STATES COURT OF APPEALS

FOR THE FIRST CIRCUIT

No. 89-1079

FRANK J. CAMOSCIO,

Plaintiff, Appellant,

v.

JUDGE WILLIAM J. TIERNEY, ET AL.,

Defendants, Appellees.

Before

Campbell, Chief Judge,

Breyer and Selya, Circuit Judges.

ORDER OF COURT

Entered May 19, 1989

The motion to have court explain reasons is denied.

By the Court:

FRANCIS P. SCIGLIANO, Clerk

By DANIEL F. LOUGHRY
Chief Deputy Clerk

[cc: Messrs. Camoscio, Maldero, Valvo, and Ms. Bourquin]

UNITED STATES COURT OF APPEALS

FOR THE FIRST CIRCUIT

No. 89-1079

FRANK J. CAMOSCIO,

Plaintiff, Appellant,

v.

JUDGE WILLIAM J. TIERNEY, ET AL.,

Defendant, Appellees.

Before

Campbell, Chief Judge,

Breyer and Selya, Circuit Judges.

ORDER OF COURT

Entered April 4, 1989

Plaintiff Frank Camoscio filed an

action invoking 42 U.S.C.§§ 1983, 1984, 1985, 1986 against both Vito Maldero, who had sued plaintiff in a state court, and the state court judge who had presided over the trial. Camoscio contended that the judge had denied him due process by instructing the jury to find him guilty and by barring him from filing a Rule 60(b) motion for relief from judgment and that Maldero had knowingly presented false evidence and conspired with the judge to defraud plaintiff. Papers attached to the complaint indicated that a judgment had been returned against Camoscio's business in the state court action and that the Massachusetts Appeal Court had affirmed that judgment.

The defendant judge moved to dismiss, and a hearing on this motion was held on November 4, 1988, at which the district court granted the motion and

dismissed the entire action.

Camoscio has improperly failed to file a transcript of the November 4, 1988 hearing. See Fed. R. App. P. 10(b). It is difficult to pass on the district court's ruling, apparently delivered orally at the November 4, 1988 hearing, without a transcript of that ruling. In any event, however, we conclude that the district court did not err in dismissing Camoscio's action. To the extent Camoscio is complaining about the state judge's rulings -- whether rulings made in the course of the trial or the post trial striking of Camoscio's pleadings and denial of his Rule 60(b) motion -- neither the district court nor this court may pass on the matter, as lower federal courts do not sit in review of state court orders. Atlantic Coast Line Railroad Co. v. Brotherhood of Locomotive Engineers, 398 U.S. 281, 296

(1970); Decker v. Hillsborough County Attorney's Office, 845 F. 2d 17, 20-21 (1st Cir. 1988). Camoscio is incorrect that the order striking pleadings and returning papers is not subject to review within the state system. See Mass. G.L. ch. 211A, § 10 (appeal); Mass. G.L. ch 249, § 5 (mandamus). As for Camoscio's claims against Maldero, the allegations of conspiracy are wholly conclusory and inadequate to state a claim under the civil rights acts. Francis-Sobel v. University of Maine, 597 F. 2d 15, 17 (1st Cir.), cert. denied, 444 U.S. 949 (1979).

The judgment below is summarily affirmed pursuant to First Circuit Rule 27.1. Defendant Maldero's motion to hold Camoscio in contempt is denied.

By the Court:

Francis P. Scigliano

Clerk.

[cc: Messrs. Camoscio, Maldero and Ms. Bourquin]

Judge Tierney's Order

Boston Municipal Court Department

Small Claims

Suffolk, ss No.

VITO MALDERO, Plaintiff)
)
v.) ORDER
)
NEW ENGLAND FOOT CLINIC, Defendant)

The above entitled action was commenced in the Small Claim Department of the Boston Municipal Court where a finding and judgment was entered for the Plaintiff. The Defendant appealed the decision to the Jury of Six of the Boston Municipal Court Department pursuant to G.L. Chap. 218, sec. 23 after a jury trial the jury found for the Plaintiff. The Defendant then appealed the judgment

of the jury of six to the Massachusetts Appeals Court. On June 20, 1988 the following Memorandum and Order Under Rule 1:28 was issued by the Massachusetts Appeals Court: "Affirmance is called for because (a) any attacks on what happened before the first judge in the small claims division do not survive the jury trial; (b) attacks on the jury trial fail because there is no transcript; (c) attacks on actions by the Single Justice of this court fail because appeals were not taken. Judgment affirmed".

Therefore it is ORDERED that all pleadings filed by the parties after the order of the Appeals Court (June 20, 1988) be returned to the parties and stricken from the docket. The Clerk/Magistrate of this Department is further ordered to accept only pleadings pertaining to enforcement of the judgment.

Administrative Justice of the
Boston Municipal Court Department

AUG 4 - 1988

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss BOSTON MUNICIPAL COURT
SMALL CLAIMS
NO. 50889
APPEALS NO. SJ-87-00-11

VITO MALDERO, PLAINTIFF,

V.

NEW ENGLAND FOOT CLINICS, DEFENDANT.

MOTION TO SET ASIDE JUDGMENT

The Defendant Frank J. Camoscio moves under Rule 60 of Rules of Civil Procedure to set judgment aside and to ask for a new trial. The Defendant due to lack of funds was unable to obtain a copy of the transcripts until recently and the Appeals Court refused to grant him an extension of time in order to obtain these transcripts. The Appeals Court could not act on any of these issues raised by the Defendant without the

transcript. See rescript dated June 20, 1988 attached.

The transcript showed that the Judge deliberately misled the jury by stating that the Plaintiff had a contract for work done at 52 Commercial Wharf. See page 1-2 of transcript. The Defendant only had a proposal for work to be done at 56 Commercial Wharf and no contract ever existed between the Plaintiff and the Defendant.

The Defendant was denied the right to enforce a court order of Judge Tierney to force the Plaintiff to produce the name of the Fire Inspector as well as names and addresses of workers who allegedly assisted him on these imaginary jobs. During the trial the Defendant finally learned the name of the Fire Inspector whom the Plaintiff claimed to have inspected the New England Foot Clinics. After the trial the Defendant

contacted this Fire Inspector. Then, he received a letter from him stating that he had never inspected 56 Commercial Wharf, ground floor (New England Foot Clinics) but he did inspect 52 Commercial Wharf, 2nd floor where he met a man claiming to be the New England Foot Clinics administrator who was really not the defendant. See attached letters.

Judge Tierney instructed the jury to find the Defendant guilty as the first judge had done. See transcript page 2-21. Therefore, the Plaintiff seeks a new trial due to new evidence and unfair prejudicial instructions by the Judge to the jury.

PRAYER

1. The Defendant prays for a new trial.

ATTACHMENTS

1. Rescript entered on June 20, 1988, Appeals Court for the Commonwealth.

2. Complete copy of the transcripts.

3. Letter from Fire Inspector used in evidence, plus 3 letters of retraction from the Fire Inspector.

4. Copy of Motion For Relief From Judgment filed with the Appeals Court No. A.C. 87-1394 on February 5, 1988.

I hereby certify that the above statements are true and are made under the pains and penalties of perjury.

Frank J. Camoscio

Frank J. Camoscio
Pro se
252 Hanover Street
Boston, Massachusetts 02113
(617) 720-2849

Dated: July 18, 1988.

CERTIFICATE OF SERVICE

I, Frank J. Camoscio, Defendant, hereby certify that I have served the foregoing Motion To Set Aside Judgment upon the Plaintiff Vito Maldero, 64 North Margin Street, Boston, Massachusetts 02113 by mailing postage prepaid.

Frank J. Camoscio

Frank J. Camoscio
Pro se
252 Hanover Street
Boston, Massachusetts 02113
(617) 720-2849

Dated: July 18, 1988.